

Message Text

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ACTION L-03

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E.O. 11652: N/A
TAGS: PFOR, TH, US
SUBJECT: AMENDMENT TO THAI-US EXTRADITION TREATY

REF: (A) STATE 058720; (B) STATE 096210

SUMMARY: EMBOFF MET WITH MFA OFFICIAL DEC 27 FOR INFORMAL DISCUSSION OF EXTRADITION TREATY DURING WHICH MFA OFFICIAL POSED SEVERAL QUESTIONS WHICH HAD COME UP IN DEC 24 MEETING OF RTG OFFICIALS TO CONSIDER US DRAFT OF SUPPLEMENTARY CONVENTION. ACTION REQUESTED: THAT DEPT PROVIDE ANSWERS TO QUESTIONS RAISED. END SUMMARY.

1. ON DEC 27 EMBOFF MET WITH MFA TREATY DIVISION CHIEF SUCHINDA YOUNGSUNTHON AT HIS REQUEST TO DISCUSS THE PROPOSED SUPPLEMENTARY CONVENTION TO THE EXTRADITION TREATY. SUCHINDA SAID THAT A COMMITTEE OF THAI OFFICIALS, MAINLY LAWYERS, HAD MET DEC 24 AND COME UP WITH SEVERAL QUESTIONS ABOUT THE U.S. DRAFT CONTAINED REF A AND THE AIDE MEMOIRE, REF B, WHICH HE REQUESTED BE ANSWERED SO THAT HE COULD MAKE EXPLANATIONS TO THE COMMITTEE. ISSUES ON WHICH HE SOUGHT CLARIFICATION AND COMMENTS MADE BY THE COMMITTEE WERE AS FOLLOWS:

2. RE ARTICLE I BIS: WHY DID THE USG WISH TO ADD
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ARTICLE I BIS WHEN ARTICLE I ITSELF CONTAINED, IN THAI ESTIMATION, STRONGER LANGUAGE FOR EXTRADITION? SUCHINDA SAID THAT THE COMMITTEE HAD PRESENTED THE ARGUMENT THAT SINCE ARTICLE I STATES THAT THE PARTIES "SHALL DELIVER UP" CRIMINALS FOR EXTRADITION, WHILE ARTICLE I BIS STATES THAT THE PARTIES "SHALL HAVE THE POWER TO GRANT EXTRADI-

TION", THE INCLUSION OF ARTICLE I BIS WOULD WEAKEN THE TREATY. THE LANGUAGE "SHALL HAVE THE POWER" CONTAINED IN ARTICLE I BIS WAS THOUGHT BY THE COMMITTEE TO MEAN THAT THERE WAS NO FIRM OBLIGATION TO EXTRADITE, WHILE ARTICLE I WAS EXPLICIT. WHEN EMBOFF NOTED THAT ARTICLE I BIS WAS INTENDED TO COVER COMMISSION OF CRIMES IN THIRD COUNTRIES, SUCHINDA SAID THAI INTERPRET "JURISDICTION" AS STATED IN ARTICLE I TO INCLUDE SUCH OFFENSES AS COUNTERFEITING (AN EXAMPLE, HE NOTED, USED IN THE AIDE MEMOIRE), WHICH ARE WITHIN THAI JURISDICTION WHEREVER COMMITTED. EMBOFF POINTED OUT NARCOTICS EXAMPLE IN AIDE MEMOIRE, TO WHICH SUCHINDA REPLIED THAT THAI DID NOT HAVE CONSPIRACY LAW GOVERNING NARCOTICS TRAFFICKING. HE THEN STATED THAT SEVERAL SPECIFIC EXAMPLES OF WHAT USG HAD IN MIND WOULD BE USEFUL TO THE COMMITTEE. THE DEFINITION OF "JURISDICTION" WAS NOT, ACCORDING TO THE THAI VIEW, LIMITED TO THE PHYSICAL BOUNDARIES OF A STATE. WHEN EMBOFF ASKED IF THAI JURISDICTION EXTENDED TO COMMISSION OF NARCOTICS TRAFFICKING CRIMES IN OTHER COUNTRIES, SUCHINDA SAID HE WOULD PREFER TO HAVE SPECIFIC EXAMPLES OF WHAT USG HAD IN MIND IN ORDER TO MAKE A DETERMINATION.

3. RE ARTICLE II: SUCHINDA NOTED THAT THERE HAD BEEN A SLIGHT PROBLEM WITH THE INCLUSION OF TRAFFICKING IN CANNABIS SATIVA L., WHICH IS CONSIDERED ONLY A MINOR OFFENSE IN THAILAND, IN THE LIST OF NARCOTICS CONTAINED IN ITEM 24. HE SUGGESTED THAT IT MIGHT BE USEFUL TO INCLUDE SOME LANGUAGE TO THE EFFECT THAT EXTRADITABLE OFFENSES SHOULD BE THOSE WHICH, ACCORDING TO LAWS OF BOTH PARTIES, ARE PUNISHABLE WITH IMPRISONMENT OF NOT LESS LIMITED OFFICIAL USE

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THAN ONE YEAR. EMBOFF NOTED THAT THE QUANTITY OF CANNABIS INVOLVED MIGHT AFFECT THE SERIOUSNESS OF A CASE, BUT AGREED TO REPORT THAI SUGGESTION, WHICH SUCHINDA STRESSED WAS AN INFORMAL ONE COVERING WHAT THAI COMMITTEE CONSIDERED ONLY A MINOR POINT. HE THEN ASKED WHY ITEM 25 HAD BEEN INCLUDED, SINCE THAI DID NOT HAVE CONSPIRACY LAW, TO WHICH EMBOFF REPLIED THAT ITEM WAS PRESUMABLY INCLUDED TO COVER FUTURE CASE, SHOULD CONSPIRACY LAW BE PASSED BY RTG. EMBOFF ALSO NOTED THAT CONSPIRACY LAW WOULD, IN FACT, BE DESIRABLE IN OUR MUTUAL ANTI-NARCOTICS EFFORTS. SUCHINDA THEN STATED THAT THAI COMMITTEE HAD NOT HAD ANY PARTICULAR PROBLEM WITH THE INCLUSION OF ITEM 25.

4. RE ARTICLE III: SUCHINDA FOUND ARTICLE III OF THE PROPOSED SUPPLEMENTARY CONVENTION A POSSIBLE PROBLEM TO RTG BECAUSE THAI LAW MIGHT HAVE TO BE CHANGED TO CONFORM TO THE ARTICLE'S APPLICATION. HE SAID, FOR EXAMPLE, THAT

THE INSTANCE OF A THAI INVOKING HIS THAI NATIONALITY BEFORE A THAI COURT CAN BE USED AS AN EXCEPTION TO SOME THAI LAWS, BUT ONLY TO THE EXTENT THAT THE EXCEPTION DOES NOT CONFLICT WITH TREATY OBLIGATIONS. SINCE ARTICLE III IS DISCRETIONARY, THERE WOULD BE NO "OBLIGATION" TO PREVENT THE EXCEPTION. SUCHINDA ALSO NOTED THAT DELIVERING UP ONE'S OWN CITIZENS WAS A DEVIATION FROM STANDARD PRACTICE, WHICH GAVE THE COMMITTEE DIFFICULTIES, ESPECIALLY SINCE THAILAND'S EXTRADITION TREATY WITH INDONESIA, NEGOTIATED JUST LAST YEAR, HAD INCLUDED LANGAUGE SIMILAR TO THAT CONTAINED IN ARTICLE VIII OF THE EXISTING US-THAI TREATY. ALTHOUGH HE PRESENTED NO ALTERNATIVE LANGAUGE AND SAID THAT HE UNDERSTOOD THE USG PURPOSE IN AMENDING THE ARTICLE, HE WISHED TO POINT OUT THAT THAI LAW MIGHT HAVE TO BE CHANGED IN ORDER TO INSURE ARTICLE III'S APPLICABILITY.

5. SUCHINDA SAID THAT REMAINDER OF SUPPLEMENTARY LIMITED OFFICIAL USE

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CONVENTION WAS ACCEPTABLE, BUT NOTED THAT THE WORD "CONVENTION" WAS USUALLY RESERVED FOR MULTILATERAL RATHER THAN BILATERAL AGREEMENTS. HE THOUGH THAT THE AGREE-MENT MIGHT INSTEAD BE CALLED A "PROTOCOL OF AMENDMENT", ALTHOUGH EVEN THAT TERMINOLOGY, HE ADMITTED, WAS NOT PRECISE BECAUSE THE AGREEMENT WOULD ADD AS WELL AS CHANGE THE BASIC TREATY. EMBOFF SAID THAT PERHAPS THE USE OF THE WORD "CONVENTION" WAS CONSIDERED STANDARD PRACTICE BY THE DEPT, BUT AGREED TO INCLUDE INQUIRY IN EMBASSY REPORT.

6. COMMENT: CONVERSATION WAS BILLED BY SUCHINDA AS PRELIMINARY REACTIONBY COMMITTEE WHICH, AT THIS POINT IN TIME, IS SEEKING CLARIFICATION BEFORE ENTERING INTO MORE FORMAL NEGOTIATIONS. SUCHINDA AT NO TIME MADE SPECIFIC COUNTER-PROPOSALS TO U.S. DRAFT, BUT INSTEAD STRESSED HIS DESIRE TO BE ABLE TO EXPLAIN TO THE COMMITTEE WHY CERTAIN ITEMS WERE INCLUDED. HE SAID THAT PROCEDURE FOR REACHING FINAL RATIFICATION WOULD BE COMMITTEE RECOMMENDATION TO CABINET THAT IT ENDORSE AGREED-UPON TEXT AND THEN CABINET ENDORSEMENT TO THE NATIONAL ADMINISTRATIVE REFORM ASSEMBLY FOR PASSAGE AND AUTHORIZATION FOR SIGNATURE.

7. ACTION REQUESTED: REQUEST THAT DEPT ASSIST IN PROVIDING INFORMATION AND ANSWERING QUESTIONS RAISED BY SUCHINDA, PARTICULARLY WITH REGARD TO SPECIFIC EXAMPLES OF HOW ARTICLE I BIS WOULD APPLY.
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